IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 11534 of 2004(W)

I.A.24/03 IN OS.200/2002 of MUNSIFF-MAGISTRATE, CHALAKUDY

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PETITIONER:

ANNAM, AGED 87 YEARS,
W/O. KOCHUVAREED, THETHAYIL HOUSE, VELUKKARA,
PARIYARAM, THRISSUR DIST.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

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1. POULOSE, S/O.VENATTUPARAMBIL KUNJUVAREED
VELOOKKARA DESOM, PARIYARAM VILLAGE,
MUKUNDAPURAM TALUK.

2. YACOB @ JACOB,
S/O. VENATTUPARAMBIL KUNJUVAREED, VELOOKARA DESOM,
PARIYARAM, THRISSUR DIST.

* 3. JISHO, S/O. VENATTUPARAMBIL PAULOSE
-DO- -DO-. (DELETED)

4. JIJO, S/O.VENATTUPARAMBIL POULOSE,
-DO- -DO-.

* THE 3RD RESPONDENT IS DELETED FROM THE PARTY ARRAY
AS PER ORDER DATED 6.4.2006 IN I.A.13781/04

BY ADV. SRI.S.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.11534/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF I.A.24/03 IN O.S.200/02 OF MUNSIFF-MAGISTRATE'S COURT, CHALAKUDY.

EXT.P2 – TRUE COPY OF ORDER IN EXT.P1 I.A., DT.4.12.03.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

W.P.(C) No. 11534 OF 2004

Dated this the 2nd day of July, 2007

JUDGMENT

Heard both sides. An application for amendment of a suit for mandatory injunction based on a claim of easement of way was dismissed by the learned Munsiff Magistrate stating that the proposed amendment will amount to overhauling the plaint from top to bottom i.e., from the cause title to the schedule. The view of the learned Magistrate is that Order VI Rule 17 permits correction of 2 or 3 errors in the plaint alone.

2. I am unable to agree with the learned Munsiff. All amendments which are necessary for resolving the real controversy between the parties can be allowed at any stage of the proceedings. The only look out should be whether in allowing the amendment any prejudice is being caused to the adversary and whether the amendment will result in injustice.

3. Ext.P1 is the amendment application. The first prayer in the amendment application is that cause title of the plaint be changed so as to add the name and address of a proposed additional defendant, i.e., additional 5th defendant, one Sri.Johny. The 7th prayer in the amendment application is incorporation of an additional paragraph in the

body of the plaint, i.e., para 6 A which contains certain allegations against the proposed additional 5th defendant and lays foundation for the plaintiff's claim against the proposed 5th defendant. Thus a careful reading of Ext.P1 will show that Ext.P1 was not an amendment application simplicitor. It was an application for impleadment-cum-amendment.

4. Having regard to the submissions which are addressed before me by the learned counsel for the respondent, I am of the view that on the facts of this case the petitioner was not entitled to seek impleadment of the proposed additional 5th respondent through Ext.P1 a composite application. I approve Ext.P2 order to the extent it declines prayers 1 and 7 in Ext.P1 application and prayers which have anything to do. But as regards the other prayers in Ext.P1 which are also seen declined under Ext.P2, I am in agreement with the learned counsel for the petitioner in his submission that those prayers even if allowed will not cause any legal prejudice to defendants 1 to 4 in the suit. Those prayers should have been allowed by the learned Munsiff ensuring that the petitioner plaintiff does not get away from the effect of fatal and unwithdrawable admissions, if any, contained in the unamended plaint.

5. Under the above circumstance, I set aside Ext.P2 and direct the learned Munsiff to take a fresh decision on Ext.P1 after hearing both

sides. While taking fresh decision as directed above, the learned Munsiff should have due regard to the judicial precedents which may be cited by counsel on either sides covering the principles to be applied while exercising powers under Order VI Rule 17. Fresh decision will be taken by the learned Munsiff at the earliest and at any rate within two months of receiving copy of this judgment.

It is also clarified that nothing stated in this judgment will preclude the petitioner from filing separate application for impleading anybody else including the proposed additional 5th respondent. If if any such impleadment application is received by the court, the same will be decided in accordance with law.

The Writ Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

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